HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Misc. Application No. 122 of 2001

Date of Decision : 10th March, 2006

~~A.F.R. (Approved for reporting)~~

Not approved for reporting.

Date Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 122 of 2001
(Old No. 5667 of 1999)

1. Kedar Dutt S/o Bhani Ram

2. Smt. Varsha Devi W/o Sri Jagdish Prasad

3. Anusuya Prasad
S/o Shri Kedar Dutt
All R/o Village – Bedula Patwari Circle Panti
Tehsil Tharali, Distt. Chamoli ... Applicants

Versus

1. State of Uttaranchal

2. Shri Mohan Prasad
S/o Shri Jayanand
R/o village Bedula Patwari Circle Panti
Tehsil Tharali,
District – Chamoli ... Opp. Parites

Sri Pankaj Purohit, Learned counsel for the applicants
Sri G.S. Sandhu, Learned A.G.A. for the State

Hon'ble J.C.S. Rawat, J.

The present petition u/s 482 has been directed to quash the order dated 23.10.1997 passed by the Chief Judicial Magistrate Chamoli (Annexure-4 to the petition) rejecting FR No. Nil/95 dated 24.07.1995 in Case Crime No. 1/94 State Vs. Varsha Devi and quash the order dated 12.08.1999 passed by the Chief Judicial Magistrate Chamoli in Case Crime No. 895/97 State Vs. Varsha Devi and others.

It is alleged in the F.I.R. that when the informant Mohan Prasad was going to his village on 25.05.1994 in the eveving he was informed by Anusuya Prasad that his mother Smt. Madhi Devi is missing from his house since 24.05.1994 morning. Kedar Dutt-applicant No.1 openly stated in his presence of all villagers that his wife had committed suicide by hanging.

Therefore, the villagers and Gram Pradhan went on the spot for preparation of her cremation in the morning. It was also alleged in the F.I.R. that the applicant Kedar Dutt had illicit relations with his daughter in law and they jointly had committed this murder.

The matter was investigated by the revenue police and final report was submitted. Subsequently the investigation was transferred to the regular police and the regular police also submitted the final report. The Magistrate after rejecting the final report took the cognizance of the offence u/s 302 / 201 I.P.C. The learned Magistrate has alleged that the dead body of the deceased was taken away forcibly from the patwari and thereafter she was cremated in order to destroy the evidence. He has also alleged that that the statement of Anusuya Prasad and Dev Singh and other witnesses has corroborated this fact. I have gone through the statement u/s 161 Cr.P.C. and I find that Anusuya Prasad and Dev Singh had stated u/s 161 Cr.P.C. when the inquest was conducted it was found that it was a natural death and thereafter the said body was handed over to the relatives of the deceased. It is also in the statement that the body was handed over to the relatives by the patwari and thereafter it was cremated. There was one opinion in the inquest report that one panch was not agreeable to the opinion of the other. In the statement as indicated above, there is nothing that the accused has snatched the said body from the possession of the patwari. The learned Magistrate has not correctly valuated or appreciated the evidence on record. The learned Magistrate had not applied his mind while passing the order.

The order, therefore, passed by the learned Magistrate is liable to be set aside and the case is remanded back to the

C.J.M. to pass the suitable order as to whether prima-facie case is made out against the accused or not.

With the aforesaid observation, the petition is disposed of accordingly.

(J.C.S. RAWAT, J.)

10th March, 2006
Shiv